

REMARKS

The Office Action mailed March 8, 2006 considered claims 1-18 and 49-66. Claims 1-9, 11-18, 52-54, 58-63 and 65-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan, et al. (US 5,721,827) hereinafter *Logan* in view of Carruthers, et al. (US 2002/0128904) hereinafter *Carruthers*. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Logan* and *Carruthers* in view of Applicant Admitted Prior Art (hereafter AAPA). Claims 49, 55, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Logan* and *Carruthers* in view of Wodarz, et al. (US 6,999,912) hereinafter *Wodarz*. Claims 50 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Logan*, *Carruthers*, in view of *Wodarz*, in view of Finseth, et al. (US 6,813,775) hereinafter *Finseth*. Claims 51 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Logan* and *Carruthers* in view of *Wodarz*, in further view of Roseman (US 6,012,984) hereinafter *Roseman*.¹

Applicants respectfully traverse the rejections cited in the Office Action. To sustain a rejection under 35 USC 103, the cited references must show each and every element recited in the claims. The Examiner has failed to cite art which, as recited by claim 1 of the application, shows "delivering ...the data file defining for each advertisement, the ...relative or absolute weight...to at least one receiver module configured to display the advertisement content of the advertisement in accordance with the data file...." Note that in the element preceding this element in the claim, relative weight is defined as corresponding to a proportional allocation of remaining advertising inventory that can be used for displaying each flexible advertisement.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

Absolute weight is defined as corresponding to a guaranteed impression frequency for displaying each committed advertisement during a period of time.

As a primary reference, the Examiner cites Logan. Logan, however, merely teaches of sending a compilation file, which may include a session schedule file and a number of program segment files. Col. 5, lines 20-49. The session schedule file includes a recommended order and the identification of program files making up a playback session Col. 5, lines 40-42. Logan further teaches that the compilation file may specify an order in which the program segment files are played. However, Logan explicitly teaches that this order is determined at the server. Col. 9, lines 8-13. See also Col. 7, lines 35-37 which state that a sequence is initially determined by the server and optionally modified by the subscriber. A subscriber can modify the sequence by manual interaction with the server or by using player controls. Col. 9, lines 35-45. While Logan may show sending a data file, it most certainly does not disclose sending a data file that includes the absolute and relative weights defined in the claims to at least one receiver module configured to display the advertisement content of the advertisement in accordance with the data file.

If Logan shows a weight being sent to the at least one receiver module configured to display the advertisement content of the advertisement in accordance with the data file at all, it does so only insofar as it teaches sending an order for advertisements to be displayed. However, as noted above, Logan clearly fails to disclose or suggest that absolute and relative weights, as defined in the claims of the present application, are sent to a receiver module.

In the rejection, the Examiner also relies on Carruthers. However, while Carruthers does illustrate some weighting, Carruther's weights are clearly never sent to the player in the manner claimed. Accordingly, even if Carruther's weights have some similarities to the claimed absolute and relative weights, *arguendo*, they cannot be considered analogous because they are

never sent to the player in the manner recited by the claims of the present application. To the contrary, Carruthers teaches that the weights are used at the server to determine how advertisements are to be sent to a passive web browser such as Internet Explorer and Netscape Navigator. For example at paragraphs [0016]-[0019], Carruthers teaches that clients include web browsers. At paragraph [0026] Carruthers teaches that the delivery schedule is created at the server. Specifically, Figure 2 illustrates that the on demand scheduler 70 is at the PoP server 16. Paragraph [0026] also states that advertisements are then sent to users based on the delivery schedules. Accordingly, the weighting taught in Carruthers is only used by the server and is never sent to the client. As will be explained in more detail below, this is a significant distinction.

In the office action dated 11/03/2005, the Examiner stated at page 17 that "one cannot show nonobviousness by attacking references individually where the rejections are based on a combinations of references." The Examiner further goes on to admit that "the difference between Logan and the claimed invention is that the weight included in the delivered data file is not explicitly the relative or absolute weight as claimed" and that "the teachings of Carruthers are not used to show delivery of advertising content and a data file...." Thus, as can be inferred from these statements made in the rejection, the combination of Logan and Carruthers cannot be found to teach the delivery of absolute or relative weights to the receiver. Nor is such an element suggested by the combined teachings of the art since both Logan and Carruthers teach that scheduling is performed at the server, and as such, there is no need for weighting to be delivered to the receiver as claimed, and such that the receiver is "configured to display the advertisement content of the advertisement in accordance with the data file (including the weighting) in such a way as to satisfy the advertising impression goal, and such that each committed and each non-

committed advertisement is displayed according to the frequency defined by the weight of the advertisement within the defined period of time" as is recited by the claims of the present application.

In view of the foregoing, it is clear that there is simply no suggestion in the art that absolute and relative weights are delivered to the receiver. There would also be no motivation for modifying the teachings of Logan or Carruthers for delivering the relative and absolute weights to the receivers, as there would be no functional use for such weights in the systems described by Logan and Carruthers.

To establish a prima facie case of obviousness, the prior art must "teach or suggest all the claim limitations." MPEP 2142. However, as discussed above, the combination of art clearly fails to teach or suggest the limitation of delivering...the data file, including ...[the relative or absolute weights previously defined], as recited in combination with the other recited claim elements. It would also not make sense to modify Logan or Carruthers to make such a deliver inasmuch as Logan and Carruthers are directed to systems in which they passively play advertisements at a receiver in an order selected by a server. The claims of the present application allow advertisement selection to occur at the receiver, based on their relative and absolute weights, a significant and very useful distinction.

Furthermore, although the foregoing remarks have been focused primarily on the independent claims, it will be appreciated that all of the rejections and assertions of record with respect to the independent claims, as well as the dependent claims, are now moot, and therefore need not be addressed individually. However, in this regard, it should be appreciated that Applicant does not necessarily acquiesce to any assertions in the previous Office Action that are

not specifically addressed above, and hereby reserves the right to challenge those assertions at any appropriate time in the future, should it arise, including any official notice.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 8th day of June, 2006.

Respectfully submitted,



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